

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4488 OF 2014

Sunil B. Bharkada and Anr.

..Petitioners

Vs.

Nand J. Badlani and Anr.

..Respondents

Mr. N. V. Walawalkar, Senior Advocate i/b. S. M. Sabrad a/w. K. K. Khamare a/w. Pratik Sabrad a/w. Grecy Saldanha, for the Petitioners.

Ms. S. Patel a/w. Padma Chinta i/b. P. V. Shekhawat, for the Respondent No.1.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : R. N. LADDHA, J.

DATE : 25 APRIL 2024

P.C.

. Heard learned counsel for the parties.

2. Mr. Walawalkar, learned senior counsel appearing on behalf of the petitioners, brought to my attention the order of issuance of process. Upon reviewing the impugned order, it becomes evident that the order of issuance of the process is cryptic and unreasoned. The learned Magistrate needs to demonstrate such application of mind by indicating why the process is issued against the accused. Such an order should not be mere formality and reflects the formation of opinion. The Magistrate must apply his mind and examine if sufficient grounds exist in case or not

before issuance of order of process. A reference in this regard can be made to the judgment of the Hon'ble Supreme Court in Lallankumar Singh Vs. State of Maharashtra 2022 SCC Online SC 1383.

3. Consequently, the order of issuance of process is liable to be quashed and set aside. However, it is essential to recognize that if the Magistrate fails to fulfill their duty, the respondent / complainant should not suffer consequences, due to Magistrate's lapse.

4. As a result, the impugned order of issuance of process in CC No.2401692/SS/2012 passed by the Additional Chief Metropolitan Magistrate, 24th Court at Borivali, Mumbai is quashed and set aside and the learned Magistrate is directed to pass reasoned order afresh on its own merits. The petition stands disposed of accordingly.

5. It goes without saying that if necessary, the petitioners are free to seek legal redress for his grievance if the occasion so arises. It is made clear that this Court has not examined the merits of the case and the trial Court shall pass an order afresh on its own merits in accordance with the law.

R. N. LADDHA, J.